

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION)
OF SILVER RUN ELECTRIC, LLC, FOR)
A CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO BEGIN THE BUSINESS) PSC DOCKET NO. 18-0945
OF AN ELECTRIC TRANSMISSION UTILITY)
AUTHORIZED TO PROVIDE TRANSMISSION)
FACILITIES IN DELAWARE)
(FILED JULY 3, 2018))

ORDER NO. 9316

GRANTING

CONDITIONAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BACKGROUND

1. On July 3, 2018, Silver Run Electric, LLC ("Silver Run" or the "Company"), filed an application ("Application") with the Commission pursuant to 26 Del. C. § 203E(b) seeking a Certificate of Public Convenience and Necessity ("CPCN") to begin the business of an electric transmission utility authorized to provide electric transmission facilities in Delaware.

2. Silver Run's Application relates to its proposed construction and operation of the scope of the Artificial Island solution (the "Project") designated to Silver Run by PJM Interconnection, L.L.C. ("PJM"), the regional electric grid operator serving Delaware and all or parts of 13 other states and the District of Columbia. In particular, the Project consists of transmission system improvements and reliability upgrades PJM has determined are necessary to assure the reliability and stability of the regional electrical grid. The solution selected by PJM includes Silver Run's construction of the new 230kV Silver Run substation east of Odessa, Delaware, and a new 230kv transmission line crossing the

Delaware River that will connect the Silver Run substation with the electrical system in the Artificial Island, New Jersey area.

3. Silver Run's portion of the Project is subject to a binding cost cap of \$146 million subject to the terms and conditions described in the Designated Entity Agreement (as defined hereinafter), pursuant to which Silver Run bears the risk of construction cost overruns exceeding that cap.

4. The Public Service Commission Staff ("Staff") and the Delaware Division of the Public Advocate ("DPA"), which intervened as a matter of statutory right, are the only parties to the proceedings in this matter, the Commission having not received to date any petitions to intervene, material objections, or written submissions raising significant issues with respect to the Application from any other persons or entities.

5. Applications for an electric transmission utility CPCN are governed by 26 Del. C. § 203E, enacted by the 149th General Assembly of the State of Delaware and signed into law by Governor Carney on February 14th, 2018.¹

6. In determining whether to grant the CPCN, § 203E(b) directs the Commission to consider:

(1) Whether PJM Interconnection, L.L.C. (or its successor) ("PJM") has selected the applicant to develop or own transmission facilities included in the regional transmission expansion plan approved through PJM's Federal Energy Regulatory Commission-approved developer qualification and competitive procurement process, or if such PJM approval has not occurred:

¹81 Del. Laws c. 205.

a. The demonstrated experience, operating expertise, and long-term viability of the applicant or its affiliates, partners, or parent company;

b. The need for and impact of any transmission facilities proposed by the applicant on the safe, adequate, and reliable operation or delivery of electric supply services;

c. The engineering and technical design of any transmission facilities proposed by the applicant;

(2) The impact of granting the certificate of public convenience and necessity application on the State's economy and the benefits to the State's ratepayers; and

(3) The impact of granting the certificate of public convenience and necessity application on the health, safety, and welfare of the general public.²

7. The Commission has discretionary authority under 26 Del. Admin. C. § 3011.2.2.27 ("Regulation 3011") to "approve, conditionally approve, modify or deny" an electric transmission CPCN application where it finds doing so is in the public interest.

8. 26 Del. C. § 203E(e)(1) provides that the Commission may suspend or revoke an electric transmission CPCN for good cause where the Commission finds "material noncompliance ... with any conditions imposed in the certificate by the Commission" by the CPCN holder.

9. PJM allocated the Project costs using its *ex ante* Solution-Based Distribution Factor ("SBDFAX") methodology, which allocated approximately 90% of the total Project costs to the Delmarva Zone (despite the Delmarva Zone not receiving a commensurate level of benefits from the Project) and would result in the average Delaware residential ratepayer paying an additional \$1.32 per month in transmission charges

² 26 Del. C. § 203E(b)(1)-(3).

associated with Silver Run's remaining unspent portion of the Project solution.³

10. This Commission and the Maryland Public Service Commission filed a complaint pursuant to the Federal Power Act with the Federal Energy Regulatory Commission ("FERC") challenging application of the SBDFAF cost allocation methodology to this Project.⁴

11. On April 22, 2016, FERC upheld PJM's decision to apply the SBDFAF cost allocation methodology to allocate the costs of the Project to PJM members. Several entities, including this Commission and the DPA, filed motions for re-argument with FERC.

12. While the motions for re-argument were pending before FERC, and at the request of parties (including this Commission and the DPA), PJM issued recalculated cost allocations using two alternative methodologies - a Stability Interface Method ("SIM") and a Stability Deviation Method ("SDM"), both of which more appropriately aligned Project costs commensurate with the benefits to the Delmarva Zone.

13. Citing these alternative calculations, several parties, including this Commission, the DPA, and Silver Run's parent company, LS Power, requested FERC to reopen the record to consider the PJM alternative cost allocation methods. On July 19, 2018, FERC granted the motions for reconsideration and to reopen the record, finding that it was unjust and unreasonable to apply the SBDFAF cost allocation

³ Silver Run Application, July 3, 2018, Exhibit A, at 19. That is only Silver Run's portion of the Project. Public Service Electric & Gas ("PSE&G") is also constructing portions of the Project, and its portion is not subject to a cost cap.

⁴ FERC Docket No. EL15-95. The Commission was ultimately joined by other affected and interested parties, including the DPA.

methodology to facilities addressing stability-related issues, such as the Project.⁵ FERC stated that it would conduct a paper hearing on the appropriate cost allocation methodology for the Project and requested responses to questions regarding the SIM, SDM and a third alternative cost allocation methodology that Exelon Corporation proposed, stating that this information was "necessary to further understand and decide among" the SIM, SDM and the Exelon methodology. The SIM methodology allocates approximately 6.94% of the costs of the Project to the Delmarva Zone and the SDM methodology allocates approximately 10.36% of the costs of the Project to the Delmarva Zone. The percentage of costs that would be allocated to the Delmarva Zone in connection with the Exelon methodology has not been confirmed by FERC, but Exelon has proposed a cost allocation under which approximately 12.07% of the costs of the Project would be allocated to the Delmarva Zone.⁶ Silver Run estimates that the percentage of the costs of its portion of the Project that will be allocated to Delaware is 4.2% for the SIM, 6.2% for the SDM, and 7.2% for the Exelon methodology.⁷ Silver Run further estimates that its portion of the Project's costs will have the following effects on an average Delaware monthly residential bill and a major electric user's bill:⁸

⁵ *Delaware Public Service Commission et al. v. PJM Interconnection, L.L.C.*, 164 FERC ¶61,035 at P 42 (2018).

⁶ Silver Run Supplemental Application, December 12, 2018, at 2-3.

⁷ *Id.* at 4.

⁸ Silver Run notes that its initial Application presented this rate in \$/MW-year. It was converted to kW-month by applying a factor of 12,000. Silver Run Supplemental Application, December 12, 2018, at 4 n.7.

Cost Allocation Method	Effect of Project Cost on Average Delaware Monthly Residential Bill	Effect of Project Cost on Major Electric User's Bill
SIM	\$0.09	\$0.032/kW-month
SDM	\$0.14	\$0.048/kW-month
Exelon	\$0.16	\$0.056/kW-month

14. Several parties submitted responses to FERC addressing the three cost allocation methodologies, and several parties proposed additional allocation methodologies that FERC had not requested.

15. FERC has not yet issued a decision on which cost allocation methodology is just and reasonable for application to the Project. Nor has FERC indicated when a decision might be expected.

16. Silver Run states that the Project will benefit system reliability, Delaware's economy, and Delaware's public health, safety and welfare, and is consistent with State and Federal mandates.⁹

17. While the FERC proceeding has been pending, Silver Run has taken steps necessary to construct the Project according to PJM's timeline. Among other things, it has obtained all major necessary permits, secured all real estate rights, nearly completed the necessary engineering and procurement work to support the Project's completion schedule; completed factory acceptance tests on three of the seven submarine cables; begun preparatory work on the in-river transition

⁹ *Id.* at 5, citing Section 6 of the July 3, 2018 CPCN Application. Additionally, Silver Run identifies other benefits resulting from the terms of the permits and approvals: (1) an annual \$122,000 payment for utility use of Delaware-owned subaqueous lands; (2) \$70,000 to purchase an easement on State-owned lands; and \$125,000 paid to the Delaware Agricultural Lands Foundation for utility use of farmland in the Foundation's program. *Id.*

structure foundation to maintain the Project schedule; and secured a binding financial commitment for the Project.¹⁰

18. Under the permits and approvals received, Silver Run's construction activities are restricted to certain times of the year,¹¹ and its contractors face additional restrictions because of the nature of the work and materials and equipment used.¹² Silver Run states that if the construction period is shortened due to delays in CPCN issuance, its and its contractors' ability to manage unforeseen conditions becomes more difficult and ratepayer costs will increase. Furthermore, as the schedule pushes up against the time-of-year permit restrictions, "critical path delays may not mean day-for-day delays," but, rather, may result in delaying work for an entire quarter of the year. According to Silver Run, "[g]iven the complexity of the Project overall, any number of plausible scenarios brought on by delay of the CPCN issuance could force a compressed construction schedule - leading at best to increased overtime and higher costs for ratepayers, and at worst, failure to bring the Project online by when PJM has determined it's needed in June 2020."¹³

19. Silver Run claims that it is now at the point in its preparation where it needs the CPCN to "fully release its contractors to begin

¹⁰ *Id.* at 5.

¹¹ *Id.* at 5. For example, the U.S. Army Corps of Engineers permit and the Utility Easement Agreement between Silver Run and the State of Delaware prohibit riverbed disturbing activities from March 1 - June 30 annually, and only permit work on State-owned lands between July 5 - October 10. *Id.* at 5 and Attachments B-1, B-2.

¹² *Id.* at 6. For example, the Project's cross-linked polyethylene power cables should not be installed when ambient temperatures are below 0°C, and the efficiency or ability to work in the river can be affected by winter storms, river icing, hurricanes, tides, and heavy winds. *Id.* at 6.

¹³ *Id.*

construction, which is needed imminently to maintain [the] Project budget and schedule;"¹⁴ specifically, Silver Run "needs to release critical path construction activities in January 2019 to avoid significant cost increases to ratepayers as a result of a shortened construction schedule and resulting increased overtime costs."¹⁵

20. Unlike Silver Run, PSE&G, the owner of the Artificial Island generation units, is not subject to a cost cap for the portions of the Project for which it is responsible.

21. Silver Run recognizes the quandary in which the Commission finds itself given that FERC has not issued an order on the just and reasonable cost allocation methodology for the Project. In its Supplemental Filing on December 12, 2018, it made two proposals designed to mitigate that quandary. First, it proposed a limited CPCN approval, which provides an established, near-term deadline for issuance of a FERC order on the appropriate cost allocation for the Project. Under this proposal, if FERC does not issue an order by February 28, 2019 approving one of the three methodologies - SIM, SDM or Exelon - the Commission will have authority to review, revoke, or suspend its CPCN approval. This limited CPCN will allow Silver Run to "release its contractors to move forward with construction scopes that are required to maintain the Project construction schedule."¹⁶ Silver Run prefers this option, stating that it will reduce construction schedule uncertainty and avoid

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 7.

compressing the Project's critical path activities, and so reduce ratepayer costs¹⁷

22. Silver Run also proposes an option that it calls conditional CPCN approval. Under this proposal, the CPCN will not become effective unless FERC issues an order approving one of the three methodologies on or before February 28, 2019. Like the limited CPCN, the Commission will retain authority to review, revoke or suspend CPCN approval after that date if FERC has not issued an order. This enables the Commission to satisfy its statutory mandate to act on a CPCN application within 90 days (extended an additional 90 days for good cause), but also to retain control if FERC issues an order that is inconsistent with its indications in the July 2018 Order. If the Commission grants conditional approval, Silver Run would release construction only upon satisfaction of the CPCN's condition precedent related to FERC's cost allocation order; however, Silver Run would be authorized to commence activity immediately upon FERC's issuance of an order that approves either the SIM, the SDM or the Exelon methodology, without having to go through the process of a new application.¹⁸

23. The Commission has reviewed Silver Run's CPCN Application and supplemental filings, and has considered the evidence and arguments presented at its duly noticed December 20, 2018 public meeting.

DISCUSSION AND DETERMINATION

24. Based on the record and evidence presented in this matter, the Commission hereby finds and determines as follows:

¹⁷ *Id.*

¹⁸ *Id.* at 8.

25. We find that the consideration set forth in 26 Del. C. § 203E(b)(1) has been satisfied. After a competitive solicitation administered by PJM,¹⁹ PJM selected Silver Run, a member of the LS Power Group, to develop, construct and own the transmission facilities associated with the Project, which are included in PJM's regional transmission expansion plan as b2633.1 and b2633.2. The terms designating the Project to Silver Run are contained in the Designated Entity Agreement by and between PJM and Silver Run, dated October 29, 2015, as amended from time to time (the "Designated Entity Agreement").

26. We further find that granting Silver Run's CPCN Application, as supplemented, meets the requirements of 26 Del. C. §§ 203E(b)(2) and (b)(3). Granting Silver Run's CPCN Application will produce direct economic benefits to the State and its ratepayers. A 2015 market efficiency study performed by PJM at the Commission's request estimated that total load payments would decrease by \$17.04 million annually within the Delmarva Zone, and by \$169 million annually PJM-wide, as a result of the Project.²⁰

27. As also discussed previously, the SIM allocates approximately 6.94% of the Project's costs to the Delmarva Zone, or just slightly more than 4% to Delaware. The SDM allocates approximately 10.36% of Project costs to the Delmarva Zone, and approximately 6.2% to Delaware. The exact cost allocations that would result from FERC's adoption of the Exelon methodology have not yet been confirmed by FERC, but, as proposed

¹⁹ Seven transmission owners proposed 26 different solutions in response to PJM's solicitation. Silver Run Application, July 3, 2018, Exhibit B, at 4.

²⁰ Based on its load share within the Delmarva Zone, annual load payment savings to Delaware would be approximately \$10 million.

by Exelon, this methodology would allocate approximately 12.07% of Project costs to the Delmarva Zone, and approximately 7.24% to Delaware.

28. Further economic benefits that will result from granting Silver Run a CPCN include annual tax revenue to New Castle County and local school districts, wage and related payments associated with the approximately 30 local jobs supported during construction of Silver Run's transmission facilities, payment to the Delaware Agricultural Lands Preservation Foundation related to the purchase of a utility easement, payment to the State of Delaware for the purchase of a utility easement and annual payment for utility use of State-owned subaqueous lands, and the acquisition of a 210 acre land parcel to be donated to the Delaware Department of Natural Resources and Environmental Control for public use and access.

29. The transmission facilities to be constructed by Silver Run are subject to a binding cost cap commitment as described in its Designated Entity Agreement. This contractual cost cap benefits Delaware ratepayers, as the total extent of their Silver Run-related cost responsibility is established.

30. Pursuant to the Designated Entity Agreement, Silver Run bears the risk of cost overruns in excess of this cost cap. Silver Run's current construction budget, however, is less than its contractual cost cap, and therefore ratepayers will benefit from any savings below the cost cap amount. Silver Run's estimated budget and construction timeline for the Project are subject to a high degree of confidence as a result of its advanced development, engineering, procurement, construction contracting progress, and cost cap commitments.

31. Granting the CPCN will provide significant health, safety, and welfare benefits to the general public. The Project resolves significant reliability and stability issues and reduces complexities associated with the Artificial Island Operating Guide. A more reliable and resilient electric grid protects the public from system outages and negative economic impacts caused by blackouts. In addition, the Project provides a separate transmission connection into Delaware. Delaware and the Delmarva Peninsula are part of an energy-constrained area regionally, and this redundant transmission connection into the State reduces grid congestion and supports critical grid services such as black start capability and system restoration.

32. PJM has established that a stability issue exists on the regional electrical system which creates reliability risks. PJM has evaluated the merits of a "do-nothing" approach and concluded that there are significant risks with not proceeding with a transmission solution. The most significant risks of a do-nothing approach identified by PJM include cascading and widespread system outages (blackouts) and a potential emergency shutdown of a nuclear unit (i.e., scrambling a unit off-line).²¹

33. Finally, we recognize that Delaware ratepayers benefit from any savings below Silver Run's construction cost cap, and that maintaining Silver Run's existing construction schedule is necessary to meet PJM's required June 1, 2020, in-service date for this critical grid reliability solution.

²¹ PJM. (2017). *Transmission Expansion Advisory Committee (TEAC) Artificial Island Recommendations to the PJM Board* at p. 22, submitted as Attachment D to Exhibit A of Silver Run's CPCN Application, July 3, 2018.

34. All of these findings would, in the normal course of business, justify granting Silver Run's CPCN Application. That, however, is not the end of our inquiry. The problem is that FERC has not yet reached a decision as to which of the proposed cost allocation methodologies - the SIM, SDM or Exelon methodology - it will find to be just and reasonable, and FERC has not confirmed how costs would be allocated pursuant to the Exelon methodology; therefore, we cannot determine with absolute certainty what the impact of granting the CPCN will have on Delaware ratepayers. As we have previously discussed, the allocation of Project costs is still pending before FERC.

35. At the same time, however, we acknowledge the practical realities of the current situation. PJM's timetable for completion of the Project is June 2020. PJM has not suspended the Project pending FERC's decision regarding a just and reasonable cost allocation for the Project. Even after FERC issues a decision on that issue, we can foresee that that some party to the proceeding will request further re-argument, and, thereafter, that FERC's decision may be appealed. Indeed, it is possible that the Project may be finished before the appeals have run out. Thus, it may be years before we know what the final impact of granting the CPCN will be on Delaware ratepayers. We also must consider these practical realities in determining whether to grant the CPCN.

36. Silver Run recognizes the position in which this uncertainty puts this Commission, and has proposed two alternatives: (1) granting a limited CPCN, which would allow it to release its contractors to begin some limited construction work pending a FERC decision on or before February 28, 2019 that approves one of the three methodologies as just

and reasonable; and (2) granting a conditional CPCN, pursuant to which Silver Run can do no work until FERC issues an order approving one of the three methodologies, and which will expire if FERC does not issue such an order on or before February 28, 2019.

37. Section 203E(e)(1) gives us the right to revoke, for good cause shown, a CPCN for a certificate holder's "material noncompliance with any conditions imposed in the certificate" by the Commission.

38. In this Commission's motion for re-argument of FERC's initial decision in Docket EL15-95 and our response to FERC's request for positions on the three methodologies, we took the position that the SDM was the just and reasonable cost allocation methodology. That methodology produces an allocation to the Delmarva Zone (and hence Delaware ratepayers) that is higher than the SIM, but lower than the Exelon methodology (as proposed by Exelon). We specifically took a position that the Exelon methodology was not just and reasonable, based in part on the fact that it was not clear how costs would be allocated under that methodology. We are concerned that issuing an order granting Silver Run a CPCN on the condition that FERC issues an order approving any one of the three methodologies is inconsistent with our position before FERC. Thus, we cannot approve Silver Run's "conditional CPCN" proposal as presented.

39. We do believe, however, that it is appropriate and in the public interest to grant Silver Run a CPCN on the condition that FERC issues an order in Docket EL15-95 confirming that either the SIM or SDM cost allocation methodology will be applied to the Project.

40. We will stay the effective date of the CPCN until FERC has issued its order establishing that either the SIM or the SDM is the just and reasonable *ex ante* cost allocation for the Project. If FERC issues an order on or before February 28, 2019, establishing the allocation for the Project consistent with the SIM or the SDM, Silver Run's CPCN Application shall be deemed granted as of the date of the FERC order, and Silver Run need take no further action before this Commission. If FERC has not issued its order selecting either the SIM or the SDM as the cost allocation for the Project by February 28, 2019, that shall be deemed "material noncompliance" with the conditions of the CPCN under Section 203E(e)(1), and Silver Run's CPCN shall be deemed suspended as of the date of the FERC order. This suspension shall not preclude Silver Run from filing subsequent requests for the Commission's review and consideration in this docket.

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. Pursuant to 26 Del. C. §203E, the Commission hereby grants Silver Run's Application for a CPCN to begin the business of an electric transmission utility authorized to provide electric transmission facilities in Delaware, subject to the following express conditions and limitations:

a. The authority granted by this CPCN is conditioned upon, and shall not take effect until, issuance by FERC of an order on cost allocation accepting and approving either the SIM or the SDM as the just and reasonable *ex ante* cost allocation for the Project. Should FERC issue such an order on or before February 28, 2019, the date of the CPCN

approval shall be the date of the FERC order, without need for a further Commission order.

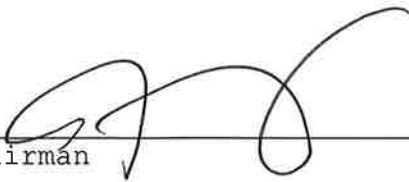
b. If FERC has not issued its order selecting either the SIM or the SDM as the cost allocation for the Project by February 28, 2019, that shall be deemed "material noncompliance" with the conditions of the CPCN under Section 203E(e)(1), and Silver Run's CPCN shall be deemed suspended as of the date of the FERC order. This suspension shall not preclude Silver Run from filing subsequent requests for the Commission's review and consideration in this docket.

2. The provisions of 26 Del. C. §208(b) are waived, and Silver Run is authorized to maintain the books and records relating to its Delaware operations outside of the State of Delaware provided, however, and upon the condition that, all such books and records relating to Silver Run's Delaware operations as the Commission may deem it reasonably necessary, from time to time, to review and copy shall be provided to the Commission at the Commission's office within the State of Delaware in a timely manner upon written request of the Commission's Executive Director or Deputy Director.

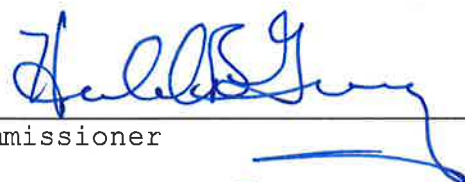
3. Silver Run shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules and permit conditions that are applicable, or may become applicable, to any matter involving the electric transmission utility business authorized by this CPCN.

4. The Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.


BY ORDER OF THE COMMISSION:


Chairman



Commissioner


Commissioner


Commissioner


Commissioner

ATTEST:


Secretary

